# PSYCHIATRIC FACILITIES REVIEW BOARD

## ANNUAL REPORT APRIL 1, 2002 - MARCH 31, 2003

The Psychiatric Facilities Review Board is appointed under the mental health provisions of the Hospitals Act of Nova Scotia. Its primary responsibilities are to review the decision of the treating psychiatrist that a person in a psychiatric facility should be held under 'formal' status and that a person is not capable of consenting to treatment. A person is held under formal status, if a psychiatrist has certified that the person (a) suffers from a psychiatric disorder and (b) is a danger either to one's own safety or to the safety of others. The board is also authorized to review a declaration of competency of a patient with respect to the administration of the patient's estate, and to make recommendations as to the treatment, care or placement of a patient.

These responsibilities and powers are formidable, since they can operate to deprive the individual of the right to make decisions concerning oneself, and authorize detention and treatment against one's wishes even in situations in which no criminal act has been committed. Outside the areas of criminal law and child protection, this power to interfere with individual autonomy is unprecedented. Therefore the Board carries a weighty onus to ensure to the extent possible that its decisions, both in terms of substance and of procedure, are reached in judicious manner within the context of the utmost respect for the rights of the individual whose interests are at stake.

This Annual Report is presented in three parts. Part I presents the statistics of the Board's operation in the period from April 1, 2002 to March 31, 2003. Part II is an analysis of trends indicated by the statistics. In Part III we bring to the attention of the Legislature issues of note, in particular a serious concern regarding lack of availability of community resources for persons with mental disorders.

## PART 1 - STATISTICS

During the twenty-fourth year of operation, April 1, 2002 to March 31, 2003, the Board received 48 requests for review under section 65 of the Hospitals Act. Forty-seven of these were from patients and the other was from a hospital. Of these, 13 patients were made informal by their attending psychiatrist and 11 patients withdrew their requests, all before their respective scheduled review dates. The Board conducted hearings for the remaining 24 patients who had requested reviews and 5 patients for whom automatic reviews are mandatary, for a total of 29 hearings.

Of the 24 requested reviews, the status of 15 patients remained formal and the remaining 9 had their status changed to that of informal patients. Of the 5 automatic reviews, 3 patients retained their formal status and 2 patients were made informal.

The Board received 1 request to review a Declaration of Capacity to Consent under section 58 of the Hospitals Act. The Board concluded that the patient lacked the capacity to consent.

## PART 2 - TRENDS

### A. Automatic Reviews

Under the Hospitals Act, section 64, the Board is required to review the status of each patient held under formal status every six months for the first two years and once per year thereafter. This must be done regardless of whether the patient has requested a hearing or not.

In the period April 1, 2002 to March 31, 2003, 5 automatic reviews were held. This is in comparison to 10 reviews held in the previous period April 1, 2001 to March 31, 2002.

### B. Requested Reviews

Non-automatic reviews are commenced primarily by requests from patients although, on occasion, requests come from hospitals as well, as was the case this year. The number of patient requests dropped this year from 53 (last year) to 47 representing a decrease of 11.3%, which itself was a significant drop from 65 requests in the year 2000 to 2001.

Hearings were held in 29 cases, representing a follow through percentage of 60%: The follow through percentage the previous year was similar.

A patient's status was changed from formal to informal by the Board in 11 instances following reviews. This represents 37% of the reviews held. This is an increase from the number made informal last year (9%).

The total number of reviews held in the period April 1, 2002 to March 31, 2003, including both requested and automatic reviews, was 29. This can be compared with figures from previous years such as: 32 in 2001-2002; 43 in 2000-01; 37 in 1999-2000; 35 in 1998-99; and, 23 in 1997-98.

The Board now has access to statistics showing the total number of times formal status is invoked at any of the psychiatric institution throughout the province. In 2002-2003 there were 354 formalizations; in 2001-2002 there were 387; in 2000-2001 there were 358; 1999-2000, 381; in 1998-99, 353; and in 1997-98, 387.

The Act provides for a maximum period of one month from the date of request to the date of hearing. In this year, the average number of days from the date a request for hearing was received to the date the hearing was conducted was 10.6 days . The comparable figure for 2001-2002 was 13.5 days while for 2000-2001 was 14.8 days for 1998-99 it was 15.0 days and in 1997-98 it was 16.2 days on average.

It should be noted that the Hospitals Act provides that the Board has 14 days within

which to issue its decision following a hearing. We routinely do so with reasons, within three to five working days.

This year showed a reduction in the number of hearings held and an increase in the number of changes in status from formal to informal. One must exercise care in offering explanations for or drawing conclusions from these trends. As the patient numbers are small, only a few cases going the other way would reverse these trends. It is best that in a report of this nature that we not engage in speculation.

The Board continues to be concerned that patients who withdraw their requests before the hearings take place do so of their own free will, without undue influence by anyone. Procedures to assure the appropriateness of a withdraw are now in place.

The Board expects the attending psychiatrist to prepare appropriate written reports on patients before their hearings. The quality and usefulness of these reports is improving. The Board urges these reports be submitted a few days before the hearing.

These Board hopes these two practices enable its members to better carry out their responsibilities.

C. Psychosurgery

As in the previous twenty-three years, there were no hearings held to determine whether there had been compliance with the requirements for psychosurgery.

## PART 3- COMMENTS

(a) Community Resources

In recent reports the Board has commented on various documents dealing with community

resources applicable to seriously mentally ill patients. The quality of the residential facilities which would be available to a patient, if one were to leave the hospital, can be material to the assessment of whether the patient is a danger to oneself or others. Little is being offered in new facilities. This affects the confidence the Board may have that a patient leaving the hospital will have a good place to go and be less likely to engage in dangerous activity.

The Board repeats its concern about the two patients in Cape Breton who have been institutionalized for their entire adult lives. The Board encourages the Government to find funds to create a long-term care facility where these two patients can receive high quality personalized care while maintaining their formal status.

(b) Appointments to the Board

Scheduling hearings is made difficult by the limited availability of the psychiatrists on the Board. They have their appointments with patients and other professional responsibilities. They can only make themselves available at certain times. Efforts should be made to recruit more psychiatrists for the Board. Scheduling is also made difficult by the commitments of the patients' attending psychiatrists.

The Discussion Paper prepared by the Mental Health Legislation Development Committee in March 2004, and the recently introduced Bill No. 109 (Mental Health Act) propose that the timings required for hearings should be shortened. These proposals, with the present shortage of psychiatrists, may not be practical.

The members of the Board bring to it their respective professional qualifications and experiences. There is a learning curve which each must go through. The psychiatrists must learn to judicially assess the opinions of colleagues. The lawyers must become familiar with basic

psychiatry and hospital practice and the lay persons must learn to apply their experience to the matters which come before the Board. Coming to the Board with some relevant background is valuable. However, what is very important is the commitment of each member to learn as much as possible from each hearing, to learn from the other members, and to be self critical of one's contribution. There is a certain valuable expertise which can best be obtained from service on the Board.

(c) Provision of Legal Representation at Hearings

Patients are advised of their right to counsel, but most patients wish to have the hearing conducted without representation by legal counsel. Those who wish to have legal counsel present and who can afford to do so may hire a private practitioner for that purpose. Those who can not afford to employ a private practitioner and who qualify for legal aid, may request legal representation from either Nova Scotia Legal Aid or Dalhousie Legal Aid.

However, legal representation is not always available due to many factors such as lack of sufficient notice or lack of sufficient lawyers. It appears that approximately 21% of the patients coming before the Review Board during the period April 1, 2002 to March 31, 2003 were represented by counsel. Our statistics do not indicate how many patients requested legal representation but could not obtain it. Patients with representation are advised by the Board that the hearing will be adjourned to accommodate counsel if they are unavailable for the hearing date. The presence of counsel for the patient better assures that all issues relevant to the patient's status are presented. In the absence of such counsel, the Board must do what it can to assure that such issues are raised and appropriate questions asked, but it is limited in this regard. It does not have the opportunity to interview the patient or to read the charts before the hearing. The work of the Board would be facilitated, if

counsel where more readily available to the patients.

(d) Procedures

Work is presently being done to prepare a practice manual to give guidance to patients, their representative, counsel and the staff at the various hospitals as to how to handle various situations such as the adjournment and withdrawal of requests. Input is being sought from the various hospitals. This is with a view to improving the procedures for the ultimate benefit of the patients.

## Conclusion

In this Report, the Psychiatric Facilities Review Board advises the Legislature that during the year being reported on there were fewer requests and fewer hearings then in the previous year, but the number of changes in status from formal to informal have increased. The Board again emphases the need for better facilities in the community for patients to live upon their leaving the hospital. The Board urges that the availability of legal counsel for patients requesting it be assured.